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Paper No. 11

In re Application of :  
Jack V. Smith : DECISION ON PETITION  
Application No. 09/898,958 :  
Filed: July 3, 2001 :  
For: Inflatable Box :

This is a decision on the petition filed on September 22, 2003 by which petitioner requests withdrawal of the holding that this application is abandoned for "failure to reply to the Office letter dated March 20, 2003." No fee is required for the petition, because the petition is being considered under 37 CFR 1.181.

The petition is granted.

Initially, it is noted that the application should technically have been held to have become abandoned for failure to file a timely reply to the Office letter dated November 18, 2003. The record shows that a reply to that Office letter was in fact received in the Office on March 11, 2003, and was entitled to a date of March 3, 2003 by reason of a 37 CFR 1.8(a) certificate of mailing affixed thereto. However, March 3, 2003 was more than three months subsequent to November 18, 2002, and therefore the reply was not timely filed.

The March 20, 2003 date refers to the examiner's letter dated March 20, 2003 by which the examiner informed petitioner that the March 11, 2003 reply (certificate of mailing dated March 3, 2003) was untimely. However, petitioner has attached to the petition a copy of a request for a two month extension of time that was filed in reply to the March 20, 2003 letter. The request for a two month extension has a 37 CFR 1.8(a) certificate of mailing affixed thereto dated April 15, 2003, within the three month period set by the November 18, 2002 Office letter, as extended by two months. In addition, petitioner has furnished a copy of the filing receipt for the extension of time request, which shows actual receipt in the Office of this paper on April 15, 2003. Moreover, the extension of time request is paper No. 8 of record in the application, and is for a two month request, not one month as erroneously noted thereon. Paper No. 8 shows that the extension fee was also received by the Office.

In summary, it is clear from the evidence submitted by petitioner, and from the record, that this application is not abandoned. Accordingly, the Notice of Abandonment is hereby vacated, the holding of abandonment is withdrawn, and the application is restored to pending status. The application is being forwarded to the examiner for action on the reply filed on March 11, 2003.

PETITION GRANTED.

E. Rollins-Cross, Director, Patent  
Examining Groups 3710 and 3720

Jack V. Smith  
P.O. Box 156  
Arden, NC 28704